



**IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.**

**Dated: October 02, 2004**

**ROBERT E. NUGENT  
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**IN RE:**

**LORETTA LYNN VAN DYKE,**

**Debtor.**

**Case No. 03-10273**

**Chapter 7**

**J. MICHAEL MORRIS, Trustee,**

**Plaintiff,**

**v.**

**Adversary No. 03-5278**

**LORETTA LYNN VAN DYKE and,**

**WILLIAM L. TOWNSLEY, III,**

**Guardian Ad Litem for Austin Lee Frost,**

**Defendants.**

**JUDGMENT ON DECISION**

The chapter 7 Trustee's complaint seeks turnover of \$7,000, a portion of a "friendly settlement" of a pre-petition state court lawsuit for damages brought by debtor's minor son, Austin

Frost, against the debtor as a result of a car accident and injuries sustained by Austin. The Trustee contends that the funds are property of the bankruptcy estate. Alternatively, the Trustee alleges debtor fraudulently transferred the \$7,000 under 11 U.S.C. § 548(a)(1)(A) or (B).

This matter was tried on September 22, 2004. The Court concludes that debtor never had an interest in the \$7,000. State law, public policy, and the terms of debtor's Shelter Insurance automobile liability policy, prohibit debtor from recovering against her own insurance in her own right as a result of her own negligence. The funds were paid on account of and in complete settlement of Austin's tort claim against the debtor and the state court approving the settlement clearly directed that the funds be paid solely for Austin's benefit.

Because the \$7,000 was never the property of the debtor it could not have become property of the estate under 11 U.S.C. § 541 and the Trustee is not entitled to its turnover. Further, because the \$7,000 was never property of the debtor, there has been no "transfer of an interest of the debtor in property" necessary to support a fraudulent transfer under 11 U.S.C. § 548(a)(1)(A) or (B).

Judgment on the Trustee's complaint is entered in favor of the defendant William L. Townsley, as guardian ad litem, and against the Trustee. Mr. Townsley may distribute the \$7,000 on Austin's behalf.

IT IS SO ORDERED.

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